

FILED: July 1, 2015

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 15-1590
(05-CA-130620)

NATIONAL LABOR RELATIONS BOARD

Petitioner

v.

BROWN & PIPKINS, LLC, d/b/a ACSENTIAL

Respondent

J U D G M E N T

The Board's proposed judgment and order are attached hereto and are adopted as the judgment of this court enforcing an order of the National Labor Relations Board.

The court's mandate shall issue forthwith.

/s/ PATRICIA S. CONNOR, CLERK

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	
Petitioner	:	No.
v.	:	
	:	Board Case No.:
BROWN & PIPKINS, LLC D/B/A ACSENTIAL	:	05-CA-130620
	:	
Respondent	:	

JUDGMENT ENFORCING AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

This cause was submitted upon the application of the National Labor Relations Board for summary entry of a judgment against Respondent, Brown & Pipkins, LLC d/b/a Acsential, its officers, agents, successors, and assigns, enforcing its order dated December 2, 2014, in Case No. 05-CA-130620, reported at 361 NLRB No. 105 (2014) and the Court having considered the same, it is hereby

ORDERED AND ADJUDGED by the Court that the Respondent, Brown & Pipkins, LLC d/b/a Acsential, its officers, agents, successors, and assigns, shall abide by said order (See Attached Order and Appendix).

Mandate shall issue forthwith.

NATIONAL LABOR RELATIONS BOARD

v.

BROWN & PIPKINS, LLC D/B/A ACSENTIAL

ORDER

Brown & Pipkins, LLC d/b/a Acsential, Fort Belvoir, Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

- (a) Failing and refusing to meet and bargain collectively and in good faith with Service Employees International Union, Local 32 BJ as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and part-time janitorial employees (including lead janitors, if utilized, and probationary employees) employed by the Respondent at the Ft. Belvoir location in Virginia.

- (b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

- (a) On request, meet and bargain with the Union as the exclusive collective-bargaining representative of the unit employees on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.
- (b) Within 14 days after service by the Region, post at its facility in Ft. Belvoir, Virginia copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such

as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 11, 2014.

- (c) Within 21 days after service by the Region, file with the Regional Director for Region 5 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES

POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES
COURT OF APPEALS ENFORCING AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to meet and bargain collectively and in good faith with Service Employees International Union, Local 32 BJ (the Union) as the exclusive collective-bargaining representative of our employees in the following appropriate unit:

All full-time and part-time janitorial employees (including lead janitors, if utilized, and probationary employees) employed by us at our Ft. Belvoir location in Virginia.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, meet and bargain with the Union as the exclusive collective-bargaining representative of the unit employees on terms and conditions of employment, and put in writing and sign any agreement reached.

BROWN & PIPKINS, LLC D/B/A ACSENTIAL

The Board's decision can be found at www.nlrb.gov/case/05-CA-130620 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.



NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Brown & Pipkins, LLC d/b/a Acsential and Service Employees International Union, Local 32 BJ.
Case 05-CA-130620

December 2, 2014

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS JOHNSON
AND SCHIFFER

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge and amended charge filed by Service Employees International Union, Local 32 BJ (the Union) on June 10 and 16, 2014, respectively, the General Counsel issued the complaint on August 6, 2014, against Brown & Pipkins, LLC d/b/a Acsential, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the Act. The Respondent failed to file an answer.

On September 16, 2014, the General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on September 18, 2014, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was received by August 20, 2014, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated August 28, 2014, notified the Respondent that unless an answer was received by September 11, 2014, a motion for default judgment would be filed. Nevertheless, the Respondent failed to file an answer.

In the absence of good cause being shown for the failure to file an answer, we deem the allegations in the complaint to be admitted as true, and we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Georgia limited liability company with an office and place of business in Ft. Belvoir, Virginia (the Respondent's facility), has been engaged in providing custodial and cleaning services to the United States Government. During the 12 months preceding issuance of the complaint, a representative period, the Respondent, in conducting its business operations described above, has provided services to the United States Government in excess of \$50,000.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals have held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

George Brown	Project Manager
Courtney Collins	Owner
Deidre Brown Collins	President and Owner
Annette Pipkins	Human Resources Manager and Owner

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and part-time janitorial employees (including lead janitors, if utilized, and probationary employees) employed by the Respondent at the Ft. Belvoir location in Virginia.

At all times since September 4, 2012, and at all material times, the Respondent has recognized the Union as the exclusive collective-bargaining representative of the unit. This recognition has been embodied in a collective-bargaining agreement, which was effective from September 4, 2012 to August 1, 2014. At all times since September 4, 2012, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Since about April 11, 2014, the Union requested that the Respondent meet for the purposes of negotiating a successor collective-bargaining agreement with respect to wages, hours, and other terms and conditions of em-

ployment. Since about April 11, 2014, the Respondent has refused to meet and bargain, including by refusing to meet on reasonable dates and at reasonable times, and to meet for in-person negotiations.

CONCLUSION OF LAW

By the conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act, in violation of Section 8(a)(5) and (1) of the Act. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by, since about April 11, 2014, refusing to meet and bargain with the Union, including by refusing to meet on reasonable dates and at reasonable times, and to meet for in-person negotiations, we shall order the Respondent, on request, to meet and bargain in good faith with the Union as the exclusive collective-bargaining representative of the unit and, if an understanding is reached, to embody the understanding in a signed agreement.¹

ORDER

The National Labor Relations Board orders that the Respondent, Brown & Pipkins, LLC d/b/a Acsential, Fort Belvoir, Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to meet and bargain collectively and in good faith with Service Employees International Union, Local 32 BJ as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and part-time janitorial employees (including lead janitors, if utilized, and probationary employees) employed by the Respondent at the Ft. Belvoir location in Virginia.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, meet and bargain with the Union as the exclusive collective-bargaining representative of the unit employees on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

(b) Within 14 days after service by the Region, post at its facility in Ft. Belvoir, Virginia copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 11, 2014.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 5 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. December 2, 2014

Mark Gaston Pearce,

Chairman

¹ Member Schiffer observes that, to remedy the Respondent's unlawful failure to meet and bargain with the Union on reasonable dates and at reasonable times, the complaint sought additional remedies requiring the Respondent to: (1) bargain on request within 15 days of a Board Order; (2) bargain on request for a minimum of 15 hours per week until the parties reached an agreement, impasse, or agreed otherwise; (3) prepare and submit to the Region and the Union written bargaining progress reports every 15 days; and (4) make whole employee negotiators for earnings lost while attending bargaining sessions. She would have granted these additional remedies had they been requested in the General Counsel's Motion for Default Judgment.

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

ACSENTIAL

3

Harry I. Johnson, III, Member

Nancy Schiffer, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

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BROWN & PIPKINS, LLC D/B/A ACSENTIAL

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FILED: July 1, 2015

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUITNo. 15-1590, NLRB v. BROWN & PIPKINS, LLC
05-CA-130620

NOTICE OF JUDGMENT

Judgment was entered on this date in accordance with Fed. R. App. P. 36. Please be advised of the following time periods:

PETITION FOR WRIT OF CERTIORARI: To be timely, a petition for certiorari must be filed in the United States Supreme Court within 90 days of this court's entry of judgment. The time does not run from issuance of the mandate. If a petition for panel or en banc rehearing is timely filed, the time runs from denial of that petition. Review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only for compelling reasons.

(www.supremecourt.gov)

VOUCHERS FOR PAYMENT OF APPOINTED OR ASSIGNED

COUNSEL: Vouchers are sent to counsel appointed or assigned by the court in a separate transmission at the time judgment is entered. CJA 30 vouchers are sent to counsel in capital cases. CJA 20 vouchers are sent to counsel in criminal, post-judgment, habeas, and § 2255 cases. Assigned counsel vouchers are sent to counsel in civil, civil rights, and agency cases. Vouchers should be completed and returned within 60 days of the later of entry of judgment, denial of a petition for rehearing, or the grant or denial of a petition for writ of certiorari. If counsel appointed or assigned by the court did not receive a voucher, forms and instructions are available from the court's web site, www.ca4.uscourts.gov, or from the clerk's office.

BILL OF COSTS: A party to whom costs are allowable, who desires taxation of costs, shall file a [Bill of Costs](#) within 14 calendar days of entry of judgment. (FRAP 39, Loc. R. 39(b)).

PETITION FOR REHEARING AND PETITION FOR REHEARING EN

BANC: A petition for rehearing must be filed within 14 calendar days after entry of judgment, except that in civil cases in which the United States or its officer or agency is a party, the petition must be filed within 45 days after entry of judgment. A petition for rehearing en banc must be filed within the same time limits and in the same document as the petition for rehearing and must be clearly identified in the title. The only grounds for an extension of time to file a petition for rehearing are the death or serious illness of counsel or a family member (or of a party or family member in pro se cases) or an extraordinary circumstance wholly beyond the control of counsel or a party proceeding without counsel.

Each case number to which the petition applies must be listed on the petition to identify the cases to which the petition applies and to avoid companion cases proceeding to mandate during the pendency of a petition for rehearing in the lead case. A timely filed petition for rehearing or petition for rehearing en banc stays the mandate and tolls the running of time for filing a petition for writ of certiorari.

A petition for rehearing must contain an introduction stating that, in counsel's judgment, one or more of the following situations exist: (1) a material factual or legal matter was overlooked; (2) a change in the law occurred after submission of the case and was overlooked; (3) the opinion conflicts with a decision of the U.S. Supreme Court, this court, or another court of appeals, and the conflict was not addressed; or (4) the case involves one or more questions of exceptional importance. A petition for rehearing, with or without a petition for rehearing en banc, may not exceed 15 pages. Copies are not required unless requested by the court. (FRAP 35 & 40, Loc. R. 40(c)).

MANDATE: In original proceedings before this court, there is no mandate. Unless the court shortens or extends the time, in all other cases, the mandate issues 7 days after the expiration of the time for filing a petition for rehearing. A timely petition for rehearing, petition for rehearing en banc, or motion to stay the mandate will stay issuance of the mandate. If the petition or motion is denied, the mandate will issue 7 days later. A motion to stay the mandate will ordinarily be denied, unless the motion presents a substantial question or otherwise sets forth good or probable cause for a stay. (FRAP 41, Loc. R. 41).